Filed 3/28/02

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

EUGENIA C., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B154896 (Super. Ct. No. CK42697)

ORIGINAL PROCEEDINGS in mandate. Donna Groman, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21). Petition denied.

L. Ernestine Fields for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Kenneth Reynolds, Deputy County Counsel, for Real Party in Interest.

Law Offices of Lisa Mandel and Nancy Murphy for Minors Monique M., Denise M., and Joseph C.

Petitioner Eugenia C. (mother) is the mother of five children who have been declared dependents of the court: 17-year-old Lorraine H., 15-year-old Gina H., 10-year-old Monique M., eight-year-old Denise M., and five-year-old Joseph C. At the 18-month review hearing (Welf. & Inst. Code, § 366.22),[1] the juvenile court terminated reunification services, ordered that the two oldest children remain in long-term foster care, and scheduled a hearing for the selection and implementation of a permanent plan for the three youngest children (§ 366.26). Mother seeks writ relief (Cal. Rules of Court, rule 39.1B), claiming the juvenile court should have ordered additional reunification services beyond the 18-month period provided by law. Both the Department of Children and Family Services (Department) and the three minor children who are the subjects of this writ proceeding—Monique, Denise and Joseph—oppose the granting of relief.[2] We conclude the juvenile court did not abuse its discretion when it refused to order additional reunification services. Accordingly, we deny the petition.

FACTUAL AND PROCEDURAL HISTORY

On June 1, 2000, Denise's teacher observed swelling and redness to Denise's left eye. When the teacher asked then six-year-old Denise what had happened, Denise said her mother had hit her. The matter was reported to the El Monte Police Department and to the Department.

In conversations with police and a Department social worker, mother offered different explanations for Denise's injury. Initially, she claimed she had no idea how Denise had injured her eye. Later, she stated she "may have" pushed Denise, causing her to strike her eye on something. Finally, she admitted slapping Denise in the eye because she was angry at Denise for throwing a book at mother's live-in boyfriend, Jack. M.

---

[1] All statutory references are to the Welfare and Institutions Code.

[2] Because the court did not set a hearing for the selection and implementation of a permanent plan for Lorraine and Gina, their cases are not before this court in this writ proceeding. (See Cal. Rules of Court, rule 39.1B; *In re John F.* (1994) 27 Cal.App.4th 1365, 1373-1374 & fn. 4.)

After Denise complained of a headache, police took her to the hospital where two lacerations were found on her leg. Denise told the doctor she received the injuries when her mother struck her with a pen.

Denise's sister Monique confirmed that mother had slapped Denise in the face and had hit her on other occasions. Monique said that she, too, had been hit by her mother.

Both Denise and Monique reported that Jack often hits and yells at their mother. A police officer noticed that mother had several bruises on her legs and arms. Mother admitted that, a few days earlier, Jack had pushed her on the bed, pulled her hair and threw her to the floor. However, she declined to press charges, claiming she still loved Jack. Mother said she was not going to be living with Jack anymore because he had kicked her out.

During the Department's investigation, it learned that then 15-year-old Lorraine had a two-year-old child of her own and that she had not attended school for approximately six months.

Mother was arrested, spent one night in jail, and released on condition that she attend a parent education class.

The Department detained mother's five children. It placed the two oldest children, Lorraine and Gina, with their maternal grandmother, and the other children, Monique, Denise and Joseph, with Joseph's paternal grandmother. [3]

On June 5, 2000, the Department filed a petition pursuant to section 300. At the conclusion of the detention hearing that took place the following day, the juvenile court found that a prima facie case had been made for detaining the children. The court authorized mother to have unmonitored visits with the children at their placement, and monitored visits outside placement. The court also ordered the Department to provide reunification services.

---

[3] When the children were detained, the father of Monique and Denise was incarcerated and the whereabouts of Joseph's father were unknown. Some time thereafter, the father of Monique and Denise was released from prison and deported to Mexico, and Joseph's father was located, residing in Florida. The fathers are not parties to this writ proceeding.

According to a July 2000 Department report, mother expressed a willingness to participate in parenting and batterer's counseling. Mother also claimed she was no longer residing with Jack and said she planned to reside with friends while participating in counseling.

On July 10, 2000, the juvenile court sustained the petition, declared all five children dependents of the court, ordered mother to participate in domestic violence and parenting programs, and left intact its prior orders regarding placement of the children and visitation.

In anticipation of the six-month review hearing (§366.21, subd. (e)), the Department reported that mother had completed parenting and domestic violence programs, and was attending counseling. Mother had a temporary, part-time job and was still living with Jack. However, she stated she intended to move out and find a place of her own. A Department social worker advised mother that, so long as she and Jack were living together, Jack needed to attend parenting and domestic violence programs. Monique, Denise and Joseph were still residing with Joseph's paternal grandmother. Mother was having weekly monitored visits with the children, which were reported to be good.

The six-month review hearing took place on January 8, 2001. The court ordered the children to remain in placement and that mother continue to receive reunification services, which the court found to be adequate. The court found that mother needed additional time to secure adequate housing for the children. The court authorized mother to have unmonitored visits with the children, including (subject to Department consent) overnight weekend visits at the home of the paternal grandmother.

In anticipation of the 12-month review hearing (§366.21, subd. (f)), the Department reported that mother was still living with Jack. According to the report, however, mother said things were not working out with Jack and she intended to move into a relative's home before finding a home of her own. Mother was not working, though she expressed confidence she would soon begin working for the Salvation Army. Mother had cooperated with the Department and was still attending counseling. Mother had visited her children on a weekly basis and the visits were reported to be good or okay. Monique, Denise and Joseph were reported to be doing well in their placement with Joseph's paternal

grandmother. The Department recommended that the children remain in placement, but that reunification services continue.

The 12-month review hearing took place on July 9, 2001. The court ordered the children to remain in placement. The court found that reasonable services had been provided. It also found that there was a substantial probability the children would be returned to the mother within six months and ordered additional reunification services. The court found mother was in compliance with the case plan, but that she needed additional time to secure housing.

In anticipation of the 18-month review hearing (§366.22), the Department reported that mother was still living with Jack in a one-bedroom apartment and that, in July 2002, the two had had a child (a girl) together. [4] Mother said she wanted to stay with Jack. She also said she intended to return to work. Mother also expressed a desire to get Monique and Denise back. She explained that she also wanted to get Joseph back, but she "only [had] room for two." Mother said she would rather have the two oldest children (Lorraine and Gina) remain in their placements because "they go more by the rules where they are."

According to the report, mother was still attending counseling. She was also attending a second parenting program, this time with Jack. Jack said he and mother would get a bigger place after mother got her children back.

Mother told a Department social worker she understood Jack needed to attend a domestic violence program and that she needed to find a larger place to live for the children to return home. She said she hoped to move to a larger place in early 2002.

Mother had continued having regular weekly visits with her children, which were reported to have passed without problems.

The Department recommended against returning the children to mother at the 18-month hearing. The Department stated Jack first needed to complete parenting and domestic violence programs. The Department recommended terminating reunification services and setting a hearing for the selection and implementation of a permanent plan

---

[4] This child has not been the subject of dependency proceedings.

(§366.26). The Department stated that, if reunification efforts failed, it recommended a permanent plan of long-term foster care for Monique, Denise and Joseph with Joseph's paternal grandmother, who has expressed an interest in legal guardianship.

The 18-month review hearing took place on December 3, 2001. Mother's counsel asked for continued reunification services. When the court responded that "we're at the 18-month date," mother's counsel responded: "Then I'm asking for long-term foster care."

The court found that mother was in compliance with the case plan, but that "her housing and living situation [were] not appropriate for the children to reside in her home." The court found that returning the children to mother would create a substantial risk of detriment to their physical well-being, and that the Department had provided reasonable reunification services. The court terminated reunification services and scheduled a hearing for the selection and implementation of a permanent plan for Monique, Denise and Joseph (§ 366.26).[5] The court authorized unmonitored daytime visits on Sundays with Gina, Monique, Denise and Joseph, and authorized Lorraine to continue having weekend visits with her mother.

Mother filed a writ petition challenging the juvenile court's order. We issued an order to show cause, advising the parties of our intention to decide the matter on the merits. (Cal. Rules of Court, rule 39.1B(*l*).) The Department answered the petition, and counsel for Monique, Denise, and Joseph joined in the Department's answer.

DISCUSSION

We review the juvenile court's finding of fact under the substantial evidence test, which requires us to determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged. (*In re Brian M.* (2000) 82 Cal.App.4th 1398; *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470.) In so doing, we must resolve all conflicts in support of the juvenile court's determination and

---

[5] The court did not set a section 366.26 hearing for Lorraine and Gina because it found, by clear and convincing evidence, that they were not proper subjects for adoption. As to them, the court ordered continued long-term foster care.

indulge all legitimate inferences to uphold the court's order. If substantial evidence exists, we must affirm the juvenile court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020-1021; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820; *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.) Whether the juvenile court made the correct decision based upon its findings of fact is reviewed under the abuse of discretion standard. (*In re Brian M.*, *supra*, 82 Cal.App.4th at p. 1401, fn. 4; *In re Brequia Y.* (1997) 57 Cal.App.4th 1060, 1068.)

Although not entirely clear, mother appears to be claiming that there is no substantial evidence to support the juvenile court's finding that returning the children to her home would create a substantial risk of detriment to their physical well-being. We disagree.

First, we note that, at the 18-month review hearing, mother did not ask the court to return the children to her custody. She sought only to continue reunification services or, alternatively, to have all kids placed in long-term foster care.

Second, according to the Department's report for the 18-month review, mother acknowledged she needed to obtain a larger home before all children could be returned to her. She specifically stated that she did not have room for Jack.

In any event, substantial evidence supports the juvenile court's determination. Both Monique and Denise had stated that, while they resided with mother and Jack, Jack repeatedly hit their mother. Notwithstanding mother's numerous declarations of intent to separate from Jack, she continued to reside with him in a small, one-bedroom apartment. While it is understandable that a decision to separate became more difficult once the two had had a child together, mother knew long before the 18-month review hearing that Jack would have to complete parenting and domestic violence classes before the children could be ordered back home. However, there was no evidence Jack had completed any one of these programs when the 18-month review hearing took place. Under these circumstances, we cannot say there is no substantial evidence to support the juvenile court's finding that returning the children to mother's home would create a substantial risk of detriment to their physical well-being.

Mother also contends the juvenile court should have exercised its discretion under section 352 and continued the 18-month review hearing to enable her to receive additional reunification services. This argument lacks merit for a couple of reasons.

First, "[i]n order to obtain a . . . continuance of the hearing, written notice [must] be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance." (§ 352, subd. (a).) In this case, mother never sought a continuance (in writing or orally) of the 18-month review hearing. In the absence of such a request, we can only conclude that the trial court did not abuse its discretion in holding the 18-month hearing as scheduled. [6]

Even if we were to ignore this deficiency, we cannot say the juvenile court abused its discretion in refusing to order additional reunification services.

When Monique, Denise and Joseph were removed from mother's home, they were three years of age or older. Consequently, mother was entitled to only 12 months of reunification services. (§ 361.5, subd. (a)(1).)

Under certain circumstances, the juvenile court may extend the period for reunification services, but it may do so "up to a maximum period *not to exceed 18 months* after the date the child was originally removed from physical custody of his or her parent . . . ." (§ 361.5, subd. (a), italics added.)

In this case, the juvenile court exercised its discretion and extended reunification services for the maximum statutory period of 18 months.

Mother correctly notes that, in some cases, courts have permitted reunification services beyond the 18-month statutory deadline. However, as mother acknowledges, those cases involved truly exceptional circumstances. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1015 [Department "failed to make any effort to reunify the incarcerated father and his daughter"]; *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774 [mother

---

[6] Continuances in dependency matters are discouraged. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810.) We reverse an order denying a continuance only on a showing of abuse of discretion. (*Id.* at p. 811.)

hospitalized during most of the reunification period, and after release Department restricted visits]; *In re Daniel G.* (1994) 25 Cal.App.4th 1205 [juvenile court found that reunification services offered to mother were a "disgrace"]; *In re Dino E.* (1992) 6 Cal.App.4th 1768 [no reunification plan was ever developed for the father].)

There were no such exceptional circumstances in this case. The Department provided ample reunification services—indeed, mother has never claimed otherwise—and she was able to utilize those services at all times. Under these circumstances, the juvenile court did not abuse its discretion in declining to provide additional reunification services beyond the statutory deadline.[7]

Alternatively, mother claims the juvenile court should have ordered long-term foster care for all five children who were the subject of dependency proceedings, not just for the two oldest children. However, a court may order a child into long-term foster care without setting of a hearing pursuant to section 366.26 only if it finds that the child is not adoptable and no one is willing to act as guardian. (*In re Cicely L.* (1994) 28 Cal.App.4th 1697, 1702; *In re John F., supra*, 27 Cal.App.4th at p. 1370; § 366.21, subd. (g)(3); § 366.22, subd. (a).) In this case, the juvenile court did not make such a finding with respect to Monique, Denise and Joseph, and mother does not explain why such a finding would have been warranted. The juvenile court acted appropriately when it scheduled a section 366.26 hearing for Monique, Denise and Joseph.

---

[7] Mother suggests the juvenile court operated under the erroneous assumption that there were no circumstances under which it could extend reunification services beyond the 18-month statutory limit. However, although the court responded to mother's request for additional reunification services by noting that "we're at the 18-month date," there is nothing to suggest the trial court was unaware of its discretion to extend the reunification period if exceptional circumstances such as those discussed above existed. "It is a basic presumption indulged in by reviewing courts that the trial court is presumed to have known and applied the correct statutory and case law in the exercise of its official duties." (*Younesi v. Lane* (1991) 228 Cal.App.3d 967, 974.)

In any event, this case did not involve exceptional circumstances such as those discussed above. Consequently, it would have been an abuse of discretion for the court to order additional reunification services. (See *In re Brequia Y., supra*, 57 Cal.App.4th 1060; *Los Angeles County Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088.)

DISPOSITION

The petition for writ of mandate is denied on the merits. This opinion is final as to this court forthwith. (Cal. Rules of Court, rule 24(d).)

NOT TO BE PUBLISHED.

COOPER, P.J.

We concur:

RUBIN, J.

BOLAND, J.